

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NEUROLOGICAL SURGERY, P.C.,

Plaintiff,

- against -

AETNA HEALTH INC. and AETNA HEALTH
INSURANCE COMPANY OF NEW YORK,

Defendants.
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MEMORANDUM AND ORDER

2:19-cv-4817 (DRH) (ARL)

HURLEY, Senior District Judge:

Presently before the Court is the Report and Recommendation of Magistrate Judge Arlene R. Lindsay, dated February 1, 2022 (the “R&R” [DE 45]), recommending the Court deny Defendants Aetna Health Inc. and Aetna Health Insurance Company of New York’s (“Defendants”) motion for attorneys’ fees. *See* [DE 40]. Judge Lindsay concluded that Defendants failed to demonstrate their entitlement to attorneys’ fees pursuant to the Employment Retirement Income and Security Act (“ERISA”), 29 U.S.C. § 1132(g)(1) and Federal Rule of Civil Procedure 41(d). In particular, Judge Lindsay concluded that (i) ERISA did not entitle Defendants to an award of attorneys’ fees related to claims for Plaintiff which had no standing to assert; (ii) Defendants failed to achieve substantial success on the merits to support an award of attorneys’ fees related to claims for which Plaintiff had standing, and (iii) the facts and circumstances surrounding earlier dismissals of Plaintiff’s case suggested Rule 41(d) did not support an award of attorneys’ fees. R&R at 4–11.

More than fourteen (14) days have passed since service of the R&R and no objections have been filed. Pursuant to 28 U.S.C. § 636(b) and Federal Rule Civil

Procedure 72, this Court has reviewed the R&R for clear error. Having found none, the Court concurs in the R&R's reasoning and result. Accordingly,

IT IS HEREBY ORDERED THAT Defendants' motion for attorneys' fees is denied.

SO ORDERED.

Dated: Central Islip, New York
February 22, 2022

s/ Denis R. Hurley
Denis R. Hurley
United States District Judge